

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KELLEY WARD and	:	
JASON WARD, w/h	:	CIVIL ACTION – LAW
Plaintiffs	:	
	:	NO.
v.	:	
	:	JURY TRIAL DEMANDED
WAL-MART STORES, INC. d/b/a	:	
WAL-MART STORE #3475	:	
and	:	
WAL-MART STORES EAST, LP d/b/a	:	
WAL-MART STORE #3475	:	
Defendants	:	

DEFENDANTS' NOTICE OF REMOVAL

Defendants, Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #3475 and Wal-Mart Stores East, LP d/b/a Wal-Mart Store #3475, more properly identified simply as Wal-Mart Stores East, LP, are represented by undersigned counsel in this matter. Defendants file this Notice of Removal pursuant to 28 U.S.C. §§ 1441(a) and (b) and 1446(b) and (c) and remove this action from the Court of Common Pleas of Montgomery County No. 2014-31308, where it is now pending, to the United States District Court for the Eastern District of Pennsylvania. In support thereof Defendants state as follows:

1. On November 24, 2014, Plaintiffs Kelley Ward and Jason Ward filed a Complaint in the Court of Common Pleas of Montgomery County, No. 2014-31308. A true and correct copy of the Complaint is attached hereto as Exhibit "A".

2. The Court of Common Pleas for Montgomery County is within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

3. Plaintiffs allege they are citizens of the Commonwealth of Pennsylvania residing at 751 Cathcart Road, Blue Bell, Pennsylvania. See Exhibit "A" at ¶¶ 1-2.

4. Defendant Wal-Mart Store #3475 is a trade name for the subject Wal-Mart Store located at 650 Trooper Road, Norristown, Pennsylvania.

5. At all times material, the subject Wal-Mart Store, located at 650 Trooper Road in Norristown, Pennsylvania, that being Wal-Mart Store #3475, was maintained and operated by Wal-Mart Stores East, LP.

6. Defendant Wal-Mart Stores East, LP is the only proper Wal-Mart entity-defendant to this litigation.

7. Defendant Wal-Mart Stores East, LP is a Delaware limited partnership with its principal place of business in Arkansas.

8. Defendant Wal-Mart Stores, Inc., a Delaware corporation with its principal place of business in Arkansas, is the ultimate and sole (100%) owner of Wal-Mart Stores East, LP through various wholly owned operating entities. Neither Wal-Mart Stores Inc. nor Wal-Mart Stores East, LP resides or are citizens of the Commonwealth of Pennsylvania.

9. Plaintiffs filed this action as a major jury matter and sought damages in excess of \$50,000. See Exhibit "A".

10. Plaintiffs' action stems from an alleged incident in which Plaintiff Kelley Ward slipped and fell due to "banana residue". Id. at ¶ 14.

11. Plaintiff Kelley Ward alleges that she has sustained grave, permanent, irreparable and severe personal injuries, including, but not limited to a left medial meniscus tear, left knee joint effusion; a sprain and strain of the left ankle; soft tissue edema of the left ankle; "as well as other injuries to her head, neck and back, their bones, cells, tissues, nerves, muscles and functions; and shock and injury to her nerves and nervous system." Id. at ¶¶ 27-28, 31.

12. Plaintiff allegedly incurred “large sums of money for medical attention and various purposes”, which may continue indefinitely into the future. Id. at ¶ 30.

13. Based on information and belief, Plaintiff Kelley Ward recently underwent left knee surgery.

14. Plaintiff Kelley Ward further alleges that she has suffered “great physical pain and mental anguish”, which will continue indefinitely into the future. Id. at ¶ 29.

15. Plaintiff alleges that she has been unable to attend to her daily duties and occupations, thereby suffering a loss of earnings and/or impairment of earning capacity, which may continue indefinitely into the future. Id. at ¶ 33.

16. She also allegedly incurred a severe loss of additional expenses in obtaining ordinary and necessary services in lieu of those which she was unable to perform herself, id. at ¶ 33, as well as associated incidental expenses, id. ¶ 34.

17. Plaintiff Jason Ward, Kelley Ward’s husband, asserts a loss of consortium claim. Id. at ¶¶ 35-36.

18. Specifically, Plaintiff Jason Ward alleges that he has suffered the loss of his wife’s companionship, affection and services, as well as losses as a result of medical and other expenses. Id. at ¶ 36.

19. Based on the allegations of the severe and permanent injuries; allegations of economic and non-economic damages, some of which are and others of which may be permanent; and a demand for damages in excess of \$50,000 for the negligence and consortium claims; and based on the information and belief that Plaintiff Kelley Ward underwent left knee surgery for the injuries alleged, the case as stated by the initial pleading is removable.

20. On December 16, 2014, defense counsel telephoned Plaintiffs' counsel to inquire as to whether Plaintiffs were agreeable to stipulating to limit their damages to avoid removal to federal court; Plaintiffs' counsel advised that Plaintiffs were not willing to so stipulate.

21. Counsel's December 16, 2014 telephone conversation was memorialized in defense counsel's December 17, 2014 correspondence to Plaintiffs' counsel, a copy of which is attached as Exhibit "B".

22. Removal from the Montgomery County Court of Common Pleas is proper under 28 U.S.C. §1441(a) and (b), which authorizes the removal of any civil action of which the District Courts of the United States has original jurisdiction and where none of the parties in interest properly joined and served as a defendant is a citizen of the state in which such action is brought.

23. This Court has original jurisdiction over the subject matter under 28 U.S.C. §1332 as the parties are citizens of different states, and the matter in controversy exceeds \$75,000 as set forth herein.

24. Wal-Mart has a good faith belief, and therefore submits, that the matter in controversy exceeds the value of \$75,000, exclusive of interest and costs.

25. As described herein, based upon Plaintiffs' allegations, demand for damages in excess of \$50,000, the report of left knee surgery, and Plaintiffs' refusal to stipulate to limit damages to an amount not in excess of \$75,000, the preponderance of the evidence establishes that the matter in controversy is in excess of \$75,000 exclusive of interest and costs.

26. Based on the foregoing, the requirements of 28 U.S.C. §§ 1441(a) and (b) and 1446(b) and (c) have been satisfied and the within matter is properly removable.

27. This Notice of Removal is timely as it is being filed within thirty days of receipt by or service on Wal-Mart of the initial pleading.

WHEREFORE, Defendants Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #3475 and Wal-Mart Stores East, LP d/b/a Wal-Mart Store #3475, more properly identified simply as Wal-Mart Stores East, LP, respectfully request that the State Action be removed from the Court of Common Pleas of Montgomery County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania.

Date: 12/22/2014

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